

² The Board notes that, following the June 25, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

Administration (SSA) age-related retirement benefits without an appropriate offset; (2) whether OWCP properly denied waiver of recovery of the overpayment; and (3) whether OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments, every 28 days.

FACTUAL HISTORY

On July 15, 1998 appellant, then a 46-year-old federal employee, filed a traumatic injury claim (Form CA-1) alleging that he was injured while in the performance of duty. On July 29, 1998 OWCP accepted the claim for lumbar sprain and displacement of the lumbar intervertebral disc without myelopathy. It paid appellant wage-loss compensation on the periodic rolls commencing June 16, 2002.

On December 10, 2018 OWCP provided SSA with a Federal Employees' Retirement System (FERS)/SSA dual benefits form. It listed the computation period as November 26, 2013 and continuing.

On January 11, 2019 SSA completed the dual benefits form, which reported appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset from November 2017 through December 2018. Beginning November 2017, the SSA rate with FERS was \$1,573.00 and without FERS was \$929.80. Beginning December 2017, the SSA rate with FERS was \$1,604.40 and without FERS was \$948.30. Beginning December 2018, the SSA rate with FERS was \$1,649.30 and without FERS was \$974.80. SSA indicated that prior to November 2017 appellant received disability benefits.

In a letter dated April 12, 2019, OWCP informed appellant that it determined that he had been receiving SSA age-related retirement benefits and FECA wage-loss compensation at the same time, without an appropriate offset, resulting in a dual prohibited benefit. It explained that his FECA benefits would be adjusted based on the FERS portion of his SSA benefits attributable to his federal service.

An April 16, 2019 manual adjustment form and FERS offset overpayment calculation worksheet noted each alleged period of overpayment and provided calculations which resulted in a total overpayment to appellant of \$11,199.31 during the period November 1, 2017 through March 30, 2019.

An April 16, 2019 periodic disability rolls payment plate for appellant's compensation from March 31 to April 17, 2019 indicated that appellant's FERS/SSA offset was deducted from his compensation. In a letter dated April 16, 2019, OWCP informed appellant that his FECA compensation would be offset by \$662.62 due to his receipt of FERS/SSA dual benefits.

In a preliminary overpayment determination dated May 21, 2019, OWCP informed appellant that he had received an overpayment of compensation in the amount of \$11,199.31 for the period November 1, 2017 through March 30, 2019 because it failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to federal service. It determined that he was without fault in the creation of the overpayment. OWCP requested that appellant submit a completed overpayment recovery questionnaire (Form OWCP-

20) to determine a fair repayment method and advised him that he could request waiver of recovery of the overpayment. It also requested that he provide supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income and expenses. OWCP advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. It further notified appellant that within 30 days of the date of the letter he could request a telephone conference, a final decision based on the written evidence, or a prerecoupment hearing. No response was received from appellant.

By decision dated June 25, 2019, OWCP finalized the May 21, 2019 preliminary determination that appellant had received an overpayment of compensation in the amount of \$11,199.31 for the period November 1, 2017 through March 30, 2019 because it had failed to offset his compensation payments by the portion of his SSA age-related retirement benefits that were attributable to his federal service. It further found that he was without fault in the creation of the overpayment because he could not have reasonably known that an improper payment occurred. However, OWCP denied waiver of recovery of the overpayment because the evidence of record was insufficient to establish that recovery would defeat the purpose of FECA or would be against equity and good conscience. It required recovery of the overpayment by deducting \$200.00 from appellant's continuing wage-loss compensation payments every 28 days.

LEGAL PRECEDENT -- ISSUE 1

Section 8102(a) of FECA provides that the United States shall pay compensation for the disability or death of an employee resulting from personal injury sustained while in the performance of his or her duty.³ Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.⁴

Section 10.421(d) of OWCP's implementing regulations requires OWCP to reduce the amount of compensation by the amount of any SSA age-related retirement benefits that are attributable to the employee's federal service.⁵ FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.⁶

³ 5 U.S.C. § 8102(a).

⁴ *Id.* at § 8116.

⁵ 20 C.F.R. § 10.421(d); *see T.B.*, Docket No. 18-1449 (issued March 19, 2019); *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

⁶ FECA Bulletin No. 97-09 (February 3, 1997); *see also E.M.*, Docket No. 19-0857 (issued December 31, 2019); *N.B.*, Docket No. 18-0795 (issued January 4, 2019).

ANALYSIS -- ISSUE 1

The Board finds that OWCP properly determined that appellant received an overpayment of compensation in the amount of \$11,199.31 for the period November 1, 2017 through March 30, 2019 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

In its June 25, 2019 decision, OWCP found that an overpayment of compensation was created for the period November 1, 2017 through March 30, 2019. The overpayment was based on the evidence received from SSA with respect to age-related retirement benefits paid to appellant. A claimant cannot receive both FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.⁷ The information provided by SSA indicated that appellant received SSA age-related retirement benefits that were attributable to federal service during the period November 1, 2017 through March 30, 2019. Therefore OWCP properly established fact of overpayment.

To determine the amount of the overpayment, the portion of the SSA benefits that were attributable to federal service must be calculated. OWCP received documentation from SSA with respect to the specific amount of SSA age-related retirement benefits that were attributable to federal service. SSA provided their benefit rates with FERS and without FERS for specific periods commencing November 1, 2017 through March 30, 2019. OWCP provided its calculations for each relevant period based on a FERS offset overpayment calculation worksheet and in its May 21, 2019 preliminary overpayment determination. No contrary evidence was provided.

The Board has reviewed OWCP's calculation of benefits received by appellant for the period November 1, 2017 through March 30, 2019 and finds that an overpayment of compensation in the amount of \$11,199.31 was created.⁸

LEGAL PRECEDENT -- ISSUE 2

Section 8129 of FECA provides that an overpayment in compensation shall be recovered by OWCP unless "incorrect payment has been made to an individual who is without fault and when adjustment or recovery would defeat the purpose of FECA or would be against equity and good conscience."⁹ Section 10.438 of OWCP regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience.

⁷ 5 U.S.C. § 8116(d)(2); *see L.W.*, Docket No. 19-0787 (issued October 23, 2019); *J.T.*, Docket No. 18-1791 (issued May 17, 2019).

⁸ *C.M.*, Docket No. 19-1451 (issued March 4, 2020).

⁹ 5 U.S.C. § 8129.

Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁰

The guidelines for determining whether recovery of an overpayment would defeat the purpose of FECA or would be against equity and good conscience are set forth in sections 10.434 to 10.437 of OWCP's regulations.¹¹

Section 10.436 provides that recovery of an overpayment would defeat the purpose of FECA if recovery would cause hardship because the beneficiary needs substantially all of his or her current income (including compensation benefits) to meet current ordinary and necessary living expenses and, also, if the beneficiary's assets do not exceed a specified amount as determined by OWCP from data provided by the Bureau of Labor Statistics.¹² An individual is deemed to need substantially all of his or her current income to meet current ordinary and necessary living expenses if monthly income does not exceed monthly expenses by more than \$50.00.¹³

OWCP's procedures provide that the assets must not exceed a resource base of \$6,200.00 for an individual or \$10,300.00 for an individual with a spouse or dependent plus \$1,200.00 for each additional dependent.¹⁴ An individual's liquid assets include, but are not limited to, cash and the value of stocks, bonds, saving accounts, mutual funds, and certificates of deposit. Nonliquid assets include, but are not limited to, the fair market value of an owner's equity in property such as a camper, boat, second home, furnishings/supplies, vehicle(s) above the two allowed per immediate family, retirement account balances (such as Thrift Savings Plan or 401(k)), jewelry, and artwork.¹⁵

Section 10.438 of OWCP's regulations provides that the individual who received the overpayment is responsible for providing information about income, expenses, and assets as specified by OWCP. This information is needed to determine whether or not recovery of an overpayment would defeat the purpose of FECA or be against equity and good conscience. Failure to submit the requested information within 30 days of the request shall result in denial of waiver.¹⁶

ANALYSIS -- ISSUE 2

The Board finds that OWCP properly denied waiver of recovery of the \$11,199.31 overpayment of compensation.

¹⁰ 20 C.F.R. § 10.438.

¹¹ *Id.* at §§ 10.434-10.437.

¹² *Id.* at § 10.436.

¹³ Federal (FECA) Procedure Manual, Part 6 -- Debt Management, *Final Overpayment Determinations*, Chapter 6.400.4a(3) (September 2018).

¹⁴ *Id.* at Chapter 6.400.4a(2).

¹⁵ *Id.* at Chapter 6.400.4b(3)(a)(b).

¹⁶ 20 C.F.R. § 10.438.

As OWCP found appellant without fault in the creation of the overpayment, waiver must be considered, and repayment is still required unless adjustment or recovery of the overpayment would defeat the purpose of FECA or be against equity and good conscience.¹⁷ Appellant did not provide the financial information to OWCP which it had requested.¹⁸

In its preliminary determination dated May 21, 2019, OWCP explained the importance of providing the completed overpayment recovery questionnaire (Form OWCP-20) and financial information. It advised appellant that it would deny waiver of recovery if he failed to furnish the requested financial information within 30 days. Appellant has not submitted a completed overpayment recovery questionnaire or otherwise submitted financial information regarding monthly income and expenses. As a result, OWCP did not have the necessary financial information to determine if recovery of the overpayment would defeat the purpose of FECA or if recovery would be against equity and good conscience.¹⁹

Consequently, as appellant did not submit the financial information required under section 10.438 of OWCP's regulations, the Board finds that OWCP properly denied waiver of recovery of the overpayment.²⁰

LEGAL PRECEDENT -- ISSUE 3

The Board's jurisdiction over recovery of an overpayment is limited to reviewing those cases where OWCP seeks recovery from continuing compensation under FECA.²¹ Section 10.441(a) of the regulations provides:

“When an overpayment has been made to an individual who is entitled to further payments, the individual shall refund to OWCP the amount of the overpayment as soon as the error is discovered or his or her attention is called to same. If no refund is made, OWCP shall decrease later payments of compensation, taking into account the probable extent of future payments, the rate of compensation, the financial circumstances of the individual, and any other relevant factors, so as to minimize any hardship.”²²

¹⁷ See *N.C.*, Docket No. 18-1070 (issued January 9, 2019); *C.Y.*, Docket No. 18-0263 (issued September 14, 2018).

¹⁸ Under 20 C.F.R. § 10.438(b), failure to submit the requested information within 30 days of the request for information about income, expenses, and assets shall result in a denial of waiver of recovery, and no further request for waiver shall be considered until the requested information is furnished. See *A.F.*, Docket No. 19-0054 (issued June 12, 2019).

¹⁹ See *S.M.*, Docket No. 17-1802 (issued August 20, 2018).

²⁰ *Supra* note 18.

²¹ 20 C.F.R. § 10.441(a).

²² *Id.*

ANALYSIS -- ISSUE 3

The Board finds that OWCP properly required recovery of the overpayment by deducting \$200.00 from appellant's continuing compensation payments every 28 days.

As noted, appellant did not complete the Form OWCP-20, nor did he submit financial information as requested. The overpaid individual is responsible for providing information about income, expenses, and assets as specified by OWCP.²³ When an individual fails to provide requested financial information, OWCP should follow minimum collection guidelines designed to collect the debt promptly and in full.²⁴ As appellant failed to timely submit information to OWCP as requested, the Board finds that there is no evidence of record to demonstrate that it erred in directing recovery of the \$11,199.31 overpayment of compensation at the rate of \$200.00 from his continuing compensation payments.²⁵

CONCLUSION

The Board finds that appellant received an overpayment of compensation in the amount of \$11,199.31 for the periods November 1, 2017 through March 30, 2019 for which he was without fault because he concurrently received SSA age-related retirement and FECA wage-loss compensation without an appropriate offset. The Board further finds that OWCP properly denied waiver of recovery of the overpayment and properly required recovery of the overpayment by deducting \$200.00 days from appellant's continuing compensation payments every 28 days.

²³ 20 C.F.R. § 10.437(a)(b).

²⁴ *T.J.*, Docket No. 19-1242 (issued January 13, 2020).

²⁵ *Id.*

ORDER

IT IS HEREBY ORDERED THAT the June 25, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: January 25, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board